IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7112 OF 2005

Mohammed Saad Ismail Patel .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.V.R.Manohar, Senior Advocate, with Mr.Shirish Gupte, Senior Advocate with S.L.Maneshinde, Rizwan Merchant and Chandana Salgaonkar for applicants

Mrs.S.D.Shinde, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th November 2005.

P.C.

. This is an application under section 439 of Cr.P.C.

2. The applicant accused came to be arrested on 25th August 2005 by respondent in connection with C.R.No.536 of 2005. Offences alleged are punishable under section 467, 468, 471, 474, 429 of I.P.C. and sections 3 and 25 of Arms Act. Applicant accused was produced on 25th August 2005 and the learned Metropolitan Magistrate was pleased to remand him to police custody till 30th August 2005. Thereafter, the period was extended till 9th September 2005. Applicant is presently in judicial custody.

3. Prosecution alleges that licence bearing No.6841/K is purportedly issued on 19th August 1998 under Order dated 14th August 1993 by Extra Assistant Commissioner (HQ) Niu, Nagaland for possession of arms. It is alleged that this licence is bogus, inasmuch as communication was

received from Nagaland Government that it had not issued any licence since 1990. Thus, the case is that licence has not been issued nor renewed in Nagaland. However, the applicant has prepared a bogus licence and on that basis pursuaded the arms dealer to sell firearm. The said firearm is in custody of applicant and on the aforesaid basis, he had falsely represented to the authorities that he possesses a valid licence issued by Government of Nagaland. It is alleged that even the stamp of authority on the document is bogus.

4. Mr.Manohar, learned Senior Counsel appearing in support contends that the dealer has sold a revolver (.32) bore to applicant and he invites my attention to the receipt dated 28th February 2002. Thereafter, he invites my attention to the acknowledgement at page 27. It records that the firearm has been supplied to the licensee in person on 11th November 2002. He

contends that vide an application for renewal made in appropriate format, the licence granted by the authority has been renewed. He, thereafter, contends that in the report at page 75, details of the Revolver have been given. He submits that all these aspects were placed before the Sessions Court. He submits that Sessions Judge was in error in observing that there is a possibility of tampering with prosecution witnesses and further that applicant would abscond. He submits that despite charge sheet being filed, the learned Judge observed that there are no changed circumstances. He invites my attention to the particulars of witnesses to be examined and contends that four of them are police officers. He also invites my attention to the F.I.R. and contends that on the basis of details set out therein, it is alleged that one of the four officer in Nagaland is responsible for issuing bogus licence to applicant. In fact, the case diary records that these persons also

need to be apprehended. Mr.Manohar submits that the present status is that there is no firearm/ weapon, no ammunition or licence in respect thereof. He submits that the charge sheet is filed on 17th October 2005. He also invites my attention to the communications which specifically record that firearm licence issued to the applicant is genuine and valid. These letters are addressed by the very authorities who are supposed to have communicated to the prosecution that licences issued from the State of Nagaland are bogus. He also invites my attention to the fact that duplicate licence also has been issued. He, therefore, submits that this is a fit case where on the own showing of prosecution, the applicant cannot be charged with the offence as alleged.

5. In support of his contentions Mr.Manohar places strong reliance upon a decision of the Supreme Court in the case of Bhagirathsinh Judeja

Vs. State of Gujarat, reported in A.I.R. 1984 S.C. 372 and in the case of Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu, reported in 2005 (S.C.C. (Cri) 481. He also relies upon an order dated 16th September 2005 passed by this Court (A.S.Oka, J) in Criminal Application No.5737 of 2005. He submits that this was an identical case.

6. Mrs.Shinde, A.P.P. on the other hand urges that the applicant is not entitled to bail. She states that applicant is resident of Mumbai. He approached an authority in Nagaland for grant of licence to possess gun. She submits that he has managed to get letters issued from the authorities that the licences were issued by them. However, these letters are forged. She submits that on a clarification sought by the authorities in Maharashtra with regard to issuance of licence in the State of Nagaland, Government of Nagaland has clarified that a fraud

has been revealed wherein several cases of people hailing from West Bengal, Bihar and Maharashtra have obtained gun licence in Nagaland. She submits that from 1990 no licence has been issued by the Nagaland Government is the clarification. She relies upon several communication and correspondence in this behalf. She submits that considering the seriousness of the matter and that applicant has been assisted by some persons from Nagaland in preparation of bogus gun licence along with seals of Nagaland Government, he does not deserve to be enlarged on bail. She states that signatures on licence and on some letters are of one person. However, signatures on letters dated 26th November 2002 and 28th July 2005 are of different persons. In these circumstances, this is a clear case of collusion in obtaining false and bogus licence. There are no changed circumstances, after charge sheet is filed. More over, the trial court is directed to dispose of the case expeditiously. Hence, no

relief be granted and the application be dismissed. The other case is distinct because therein the firearm was not supplied by the dealer. The applicant thus did not possess it.

7. With the assistance of learned Senior Counsel and the learned A.P.P. I have perused the application and the annexures thereto. I have also perused the orders passed by the sessions court earlier. It is true that this is not a case where offences under the Arms Act only are alleged, but cheating and forgery as well. However, it is pertinent to note that gun licence was issued from the State of Nagaland in favour of the applicant and on the strength of the same, he was supplied the firearm by supplier/ dealer in Mumbai. Prior thereto on 24th October 2002, he applied to the authorities in the State of Maharashtra. On clarification being sought there are letters dated 30th January 2003 produced on record. These letters are from the Additional

Dy.Commissioner, New Land, Nagaland. The applicant has with prior permission and on the strength of the licence, obtained a gun in Maharashtra.

8. Therefore, assuming that offences punishable under I.P.C. are also alleged, that would not make any difference at this stage. Whether the communications/ letters are bogus or forged or issued by authorities not competent to do so can be decided at the trial only. They cannot be totally brushed aside at this stage. All the documents are already seized. As pointed out by Mr.Manohar even the wepon is not in the custody and possession of applicant. The Licence therefore cannot be utilised in these circumstances.

9. Mrs.Shinde, A.P.P. has been unable to dispute that the applicant has permanent residential address of Mumbai Applicant is not

likely to move out and make himself unavailable. In fact, that he would not be available at the trial is also not the apprehension. The applicant has been in custody for a considerable length of time and he has cooperated during the course of his custodial interrogation. There is thus no apprehension that he will abscond or tamper with the prosecution witnesses. Now that the investigation is complete and charge sheet is filed, it is not necessary to detain the applicant any further.

10. In the light of the above it is not necessary to make detailed reference to the decisions cited. The decision in the case of Jayendra Saraswati Swamigal (supra) deals with an offence of murder and the principles to be applied while considering an application for grant of bail in that situation. The other decision reiterates the principle that several factors have to be considered for grant of bail

and mere existence of prima facie case ought not to influence the decision to refuse the same. Ultimately, all principles are to be applied to individual facts.

11. In the light of the above the following order:-

i) The applicant in application No.7112 of 2005 (C.R.No.536 of 2005 registered with Oshiwara Police Station), shall be enlarged on bail subject to furnishing a personal bond of Rs.20,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer on every Saturday between 11.00 a.m. and 1.00 p.m. till

conclusion of the trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate

with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)